

REMARKS

Claims 1-33 are now pending in the application. Of these pending claims, Claims 1-33 stand rejected. The amendments to the claims are of equivalent scope as originally filed, and thus, are not narrowing amendments. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-33 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time of the application was filed, had possession of the claimed invention. Specifically, the Office Action states that the term “pulse” is not explicitly defined in the instant specification. In making the rejection, the Office Action cites two paragraphs for the proposition that the limitation “pulse” is not fully supported. Applicant respectfully traverses the instant rejection.

Application respectfully directs the Examiner’s attention to paragraph [0012] which states “the pulse measures three components of the work environment: the pace of work, efficiency of work, and job satisfaction”. Further, Applicant directs the Examiner’s attention to paragraphs [0013] and [0014] which present possible scale or values for evaluating and defining responses to member’s comments. As described in the application, members of an organization are queried as to their pulse, namely, the pace of work, efficiency of work, and job satisfaction. Applicant respectfully asserts that one skilled in the art would, given the description in the application as filed, understand

that querying a member of an organization to self rate as to his or her pulse is querying the member of the organization as to its pace of work, efficiency of work, and job satisfaction. In an effort to expedite prosecution, Applicant has amended Claims 1-7, 9 and 10 to clarify that the query can be to the energy level of the member. Support for this limitation can be found at paragraph [0012] of the instant application.

Claims 1-33 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, Claims 1, 14 and 27 are rejected as including the “consisting essentially of” term. The Office Action states the “essentially” term renders the claim indefinite and unclear because the claim does not clearly set forth the metes and bounds of the patent protection desired. Applicant respectfully traverses this characterization and respectfully submits that the “consisting essentially of” transitional phrase occupies a middle ground between “closed” claims that are written in a “consisting of” format and fully open claims which are drafted in a “comprising” format. LANDIS the Mechanics of Claim Drafting, 5th Edition, November 2005. (See also *P.P.G. Indus., Inc. v. Guardian, Ind. Corp.*, 156 F.3d 1351, 48 USPQ2d 1351, 1353-54 (Fed. Cir. 1998).

REJECTIONS UNDER 35 U.S.C. § 102

Claim 1 stands rejected under 35 U.S.C. 102(e) as being anticipated by Friedman (U.S. Pat. No. 6,591,256). In making this rejection, the Office Action cites col. 2, lines 60-67 of the Friedman reference as asking at least one question related to an individual's energy level. Applicant traverses this characterization. As stated in the

Office Action, the Friedman reference discloses having a web page for asking for input related to business problems or categories of problems. Friedman does not teach asking a member of the organization at least one question related to the member's energy level. The cited passage of the Friedman reference is related to software modules and not employee relations. As such, the Friedman does not teach querying members of an organization as to overall vitality, or energy level of a member of the organization. Friedman further does not determine the energy level of an organization as claimed in Claim 27 and its dependents.

REJECTIONS UNDER 35 U.S.C. §103

Claims 1-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over D'Alessandro (U.S. Pat. No. 6,556,974) in view of Altemuehle, et al. (U.S. Publication No. 2002/0120494). Applicant respectfully directs the attention to the Declaration under 35 USC §1.131. This Declaration by Theresa M. Welbourne, the Applicant of the instant application, states that the invention was reduced to practice prior to the filing date of the Altemuehle reference. As such, Applicant respectfully asserts that the rejection is improper.

In responding to the Applicant's arguments filed on August 31, 2005, the Office Action states that the application does not specify what the pulse is or how it is defined or obtained. For the above-discussed reasons, this characterization is strongly traversed. The Office Action further states that the D'Alessandro and Altemuehle references disclosed obtaining information from individual employees regarding their perception of performance criteria existing in the workplace and comparing with prior

survey data. Applicant respectfully asserts that since the Altemuehle reference has been overcome, this argument fails. While the Examiner cites its right to continue to interpret the claim language as broadly as possible, Applicant asserts that in none of the references cited by the Examiner is the concept of querying an employee on its pulse or energy level and, specifically, his or her pace of work, efficiency of work, and job satisfaction. This limitation simply is not found in any of the references cited. While the Examiner states that failure of the Applicant to significantly narrow the definition or scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant interprets broad interpretation be given to the claims. Applicant respectfully submits that the Examiner simply has not met the required burden with respect to finding any prior art which teaches each of the limitations of the instant application either in a single reference or in each of the references combined. As such, Applicant respectfully requests the withdrawal of the rejections.


CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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